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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/728,697

Applicant(s)

STAGG ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-18,20-33,35-39,41,42 and 44-52 is/are pending in the application.

4a) Of the above claim(s) ____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-18,20-33,35-39,41,42,44-52 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other:

DETAILED ACTION

1. The Amendment filed June 16, 2003 has been entered. Claims 1,2,4-18,20-33,35-39,41,42,44-52.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,2,4,5,8,10,13,14,16,17,18,20,21,24,26,29,30,32,35, 37, 38,41,42,44,45,47,48,51,52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddell (US 4773541) in view of Osborn (US 4397703).

4. Regarding claims 1,2,4,5,8,10,13,14,16,17,18,20,21,24,26,29,30,32,35, 37, 38,41,42,44,45,47,48,51, and 52, Riddell teaches a package and a method of packaging a product with a tear resistant film (such as polyethylene and oriented polypropylene) with a tearable tape to open the film (See Column 1, line 19 to Column 2, line 25, Column 3, line 4 to Column 4, line 9, Figures). With respect to a "controllably" tearable tape, Riddell teaches the tear is in a straight line and leaves a clean edge (See Abstract). Riddell further teaches the film must have a tear strength that is sufficiently low for opening yet provide a sufficient shipping and display stiffness and durability (Column 2, lines 6-17), but is silent in teaching a puncture-propagation tear (PPT) of at least be 20 N/ply as recited in claims 1,17, and 38.

5. Osborn is relied on as evidence of the conventionality of polyethylene films used for commercial bags used in shipping (Column 1, lines 1-25). The Osborn teaches conventional polyethylene film based packages, made of 6 mil LDPE and 9 mil LDPE, that are used for shipping products have a PPT of 48.9 N/ply and 97.9 N/ply (i.e. 11 and 22 lbf) , respectively (Columns 19 and 20, Example 7 and Table 2). Therefore it would have been obvious to select a polyethylene film of at least 20 N/ply since Riddell teaches the film must be durable and strong enough for shipping and Osborn teaches the conventional commercial polyethylene film package (i.e. commercial bags) that is durable strong enough for shipping has a PPT value of at least 20 N/ply. Thus, one would have been substituting one type of polyethylene film for another for the same purpose: mercantile packaging that is durable and suitable for shipping.

6. Claims 11 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddell (US 4773541) in view of Osborn (US 4397703).as applied to claims 1,2,4,5,8,10,13,14,16,17,18,20,21,24,26,29,30,32,35, 37, 38,41,42,44,45,47,48,51,52 above, further in view of McClintock (US 5217307).

7. Regarding claims 11 and 27, Riddell teaches applying a tear tape, but is silent in teaching the width should be 8mm. McClintock is relied on as evidence of a conventional tear tape used to access a packaged good having width of between 3 mm and 12 mm. (Column 8, lines 35-60). Therefore, it would have been obvious to select of width of at least 8mm since it was known to use a tear tape of 3 to 12 mm to

Art Unit: 1761

access packaged goods. One would have been substituting one tape for another for the same purpose: providing access to packaged good.

8. Claims 15 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddell (US 4773541) in view of Osborn (US 4397703).as applied to claims 1,2,4,5,8,10,13,14,16,17,18,20,21,24,26,29,30,32,35, 37, 38,41,42,44,45,47,48,51,52 above, further in view of Kim (US 5203634).

9. Regarding claims 15 and 31, Riddell teaches a tearable tape strip applied to the interior surface of the film and guide tape strips applied to the exterior of the film (Column 1, lines 25-38). The tear tape strip serves as a central section that shears through opposing longitudinal edges, or guide tapes. However, Riddell is silent in teaching a tearable strip that is internally tearable mounted on *both* the exterior and interior of the film. Kim '634 teaches that applying a tearable strip to the interior of the film and the guides to the exterior of the film, like that which is taught by Riddell, results in manufacturing problems. Kim '634 teaches the problems are overcome by applying an internally tearable portion and guides on both the interior and exterior of a given container wall (Column 1, line 17 to column 2, line 53). Therefore, it would have been obvious to include an internally tearable tape strip with guide portions on both the exterior and interior of the film surface since it improves the manufacturing process and one would have been substituting one type of internally tearable tape strip design for another for the same purpose.

Art Unit: 1761

10. Claims 1, 5-10,13,14,17, 21-26,29,30,33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodson et al. (US 6316036 B1) in view of Osborn (US 4397703).

11. Regarding claims 1, 5,6,8-10,13,14,17, 21,22,24-26,29,30,33-35, Hodson et al. teach a continuous tear-resistant food package (e.g. cheese) as recited in claims 33 and 35 that is made from a multi-layer film comprising polyethylene or PVDC as recited in claims 5, 6,21 and 22 (Column 2, line 67 to column 3, line 40) having a single tearable tape strip, as recited in claims 14 and 30 (see Figures 25-29), attached to the inner layer of the film, as recited in claims 8 and 24 (Column 2, lines 57-65), that is made of tensilized PP (i.e. OPP), as recited in claims 10 and 26 (Column 2, lines 10-12, Column 4, lines 16-20), and has a tab, as recited in claims 1, 17,13,29, and 30. With respect to the tape being controllably tearable, in the background of the invention Hodson et al. teach using tear tapes to open a package provide" a clean tear along an edge of the package", or would be controllably tearable(Column 1, lines 19-20). However, Hodson et al. are silent in teaching a puncture-propagation tear (PPT) of at least be 20 N/ply as recited in claims 1 and 17.

12. Osborn is relied on as evidence of the conventionality of polyethylene films used in commercial bags used in shipping (Column 1, lines 1-25). Osborn teaches conventional polyethylene film used for mercantile bags, like Hodson et al., have a PPT of 48.9 N/ply or 97.9 N/ply (i.e. 11 and 22 lbf), depending on their thickness (Columns 19 and 20, Example 7 and Table 2). Therefore it would have been obvious to select a polyethylene film of at least 20 N/ply since Hodson et al. teach a commercial bag with

Art Unit: 1761

polyethylene film and Osborn teaches conventional commercial bags comprise polyethylene film has a PPT value of at least 20 N/ply. Thus, one would have been substituting one polyethylene film for another for the same purpose: a commercial bag.

13. Regarding claims 7 and 23, Hodson et al. teach the packaging may comprise multilayer films with PP and PE (Column 2, line 49-Column 3, line 28) and include PE in a first layer (Column 3, lines 19-28) Although Hodson et al. are silent in a *second* layer is PP, since Hodson et al. teach using both PP and PE in combination to form a multilayer film and PE in a first layer to select PP as a second layer would have been an obvious matter of design choice.

14. Regarding claims 9 and 25, Hodson et al. teach the tear strip is placed on the inner surface of the bag with ink/printing disposed on an outer most surface (Column 2, line 57 to column 3, line 28) wherein the strip does not obstruct viewing the indicia.

15. Claims 11 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodson et al. (US 6316036 B1) in view of Osborn (US 4397703) as applied to claims 1, 5-10,13,14,17, 21-26,29,30,33-35 above, further in view of McClintock (US 5217307).

16. Regarding claims 11 and 27, Hodson et al. teach applying a tear tape, but are silent in teaching the width should be 8mm. McClintock is relied on as evidence of a conventional tear tape used to access a packaged good having width of between 3 mm and 12 mm. (Column 8, lines 35-60). Therefore, it would have been obvious to select of width of at least 8mm since it was known to use a tear tape of 3 to 12 mm to

Art Unit: 1761

access packaged goods. One would have been substituting one tape for another for the same purpose: providing access to packaged good.

17. Claims 38,39, 45-48, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodson et al. (US 6316036 B1) in view of Osborn (US 4397703).

18. Regarding claims 38,39, 45,47,48, and 52, Hodson et al. teach providing a continuous tear-resistant food package (e.g. cheese) as recited in claim 39 that is made from a multi-layer film comprising PVDC as recited in claim 45, (Column 2, line 67 to column 3, line 40) having a single tearable tape strip, as recited in claim 47 (see Figures 25-29), attached to the inner layer of the film, as recited in claim 48 (Column 2, lines 57-65), and has a tab, as recited in claims 38 and 52. Hodson et al. teach using tear tapes to open a package provide" a clean tear along an edge of the package", or would be controllably tearable(Column 1, lines 19-20). However, Hodson et al. are silent in teaching a puncture-propagation tear (PPT) of at least 20 N/ply as recited in claim 38.

19. Osborn is relied on as evidence of the conventionality of polyethylene films used in commercial bags used in shipping (Column 1, lines 1-25). Osborn teaches conventional polyethylene film used for mercantile bags, like Hodson et al., have a PPT of 48.9 N/ply or 97.9 N/ply (i.e. 11 and 22 lbf), depending on their thickness (Columns 19 and 20, Example 7 and Table 2). Therefore it would have been obvious to select a polyethylene film of at least 20 N/ply since Hodson et al. teach a commercial bag with polyethylene film and Osborn teaches conventional commercial bags comprise

Art Unit: 1761

polyethylene film has a PPT value of at least 20 N/ply. Thus, one would have been substituting one polyethylene film for another for the same purpose: a commercial bag.

20. Regarding claim 46, Hodson et al. teach the packaging may comprise multilayer films with PP and PE. Although Hodson et al. are silent in teaching a *first* layer of PE and a *second* layer is PP, since Hodson et al. teach using both PP and PE in combination to form a multilayer film, to select any particular order of PE and PP in a multi-layer structure would have been an obvious matter of design choice.

21. Claims 1,2,5,8,12,14,17,18,21,24,28,30,35,36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Union Carbide (GB 923899) in view of Osborn (US 4397703).

22. Regarding claims 1,2,5,12,14,17,18,21,24,30,35,36, Union carbide teaches a packaged good with a tear resistant polyethylene film forming an enclosed region with a tearable tape strip (Page 1, lines 11-35, 63-86, Page 2, lines 20-30, Page 3, lines 30-52, Page 3, line 115 to Page 4, line 35, Figures). Furthermore Union Carbide teaches "pulling of the tear tap tab lifts the tear tape and the portion of the polyethylene film coterminous therewith from the plane of the overwrap in neat, nearly straight-edged manner shown in Figure 2, which is more desirable from a reclosure standpoint and more attractive as well", which would be a controllable tear (Page 3, lines 46-52). However, Union Carbide is silent the puncture-propagation tear (PPT) is at least 20 N/ply as recited in claims 1 and 17.

23. Osborn is relied on as evidence of the conventionality of polyethylene films used in mercantile packages (i.e. commercial bags, Column 1, lines 1-25). Osborn teaches conventional polyethylene film used for mercantile packages have a PPT of 48.9 N/ply or 97.9 N/ply (i.e. 11 and 22 lbf), depending on their thickness (Columns 19 and 20, Example 7 and Table 2). Therefore it would have been obvious to select a polyethylene film of at least 20 N/ply since Union carbide teaches packaged goods with polyethylene film and Osborn teaches conventional mercantile goods packaged with polyethylene film have a PPT value of at least 20 N/ply. Thus, one would have been substituting one polyethylene film for another for the same purpose: a packaged good.

24. Regarding claims 8 and 24, Union Carbide teaches the tape is secured to the inner surface (Examples).

25. Claims 11 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Union Carbide (GB 923899) in view of Osborn (US 4397703) as applied to claims 1,2,5,8,12,14,17,18,21,24,28,30,35,36 above, further in view of McClintock (US 5217307).

26. Regarding claims 11 and 27, Union carbide teaches applying a tear tape, but is silent in teaching the width should be 8mm. McClintock is relied on as evidence of a conventional tear tape used to access a packaged good having width of between 3 mm and 12 mm. (Column 8, lines 35-60). Therefore, it would have been obvious to select of width of at least 8mm since it was known to use a tear tape of 3 to 12 mm to access packaged goods. One would have been substituting one tape for another for the same purpose: providing access to packaged good.

27. Claims 38,42,44,45,47,48,49,51,52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Union Carbide (GB 923899) in view of Osborn (US 4397703).

28. Regarding claims 38,42,44,45,47, 49,51,52, Union carbide teaches a method of packaging an article with a tear resistant film forming an enclosed region with a tearable tape strip (See Page 1, lines 1-86, Page 2, lines 20-30, Page 3, lines 30-52, Page 3, line 115 to Page 4, line 35, Figures). Furthermore Union Carbide teaches "pulling of the tear tap tab lifts the tear tape and the portion of the polyethylene film coterminous therewith from the plane of the overwrap in neat, nearly straight-edged manner shown in Figure 2, which is more desirable from a reclosure standpoint and more attractive as well", which would be a controllable tear (Page 3, lines 46-52). However, Union Carbide is silent the puncture-propagation tear (PPT) is at least 20 N/ply as recited in claim 38.

29. Osborn is relied on as evidence of the conventionality of polyethylene films used in mercantile packages (i.e. commercial bags, Column 1, lines 1-25). Osborn teaches conventional polyethylene film used for mercantile packages have a PPT of 48.9 N/ply or 97.9 N/ply (i.e. 11 and 22 lbf), depending on their thickness (Columns 19 and 20, Example 7 and Table 2). Therefore it would have been obvious to select a polyethylene film of at least 20 N/ply since Union carbide teaches packaged goods with polyethylene film and Osborn teaches conventional mercantile goods packaged with polyethylene film have a PPT value of at least 20 N/ply. Thus, one would have been substituting one polyethylene film for another for the same purpose: a packaged good.

Art Unit: 1761

30. Regarding claim 48, Union Carbide teaches the tape is secured on the inner surface (Examples).

Response to Arguments

31. In response to applicant's argument that there is no suggestion to combine Riddell with Osborne, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Riddell teaches using polyethylene films for packaging material to provide "the necessary shipping and display stiffness and durability, yet sufficiently low tear strength to permit opening" (Column 2, lines 13-17). Osborn teaches polyethylene films that are used for "shipping sacks used to store and ship" (Column 1, lines 15-25) and teach commercial bags with polyethylene of the greater than 20 N/ply (Table II). Thus Osborn provides motivation for selecting a PPT greater than 20 N/ply polyethylene films since this is a PPT used for shipping in commercial use, which is the intended use of Riddell. Applicant argues Riddell inherently teaches a PPT of less than 20 N/ply, and applicant points to PET in Table 2 on page 17 of the pending application, but it is noted that the rejection was made based on a polyethylene film, not PET which is a polyester film. Additionally, applicant has not provided any evidence to show how a polyethylene

Art Unit: 1761

film of greater than 20 N/ply would "inherently" be unsuitable for the bag of Riddell.

Applicant further argues that the paper bag embodiment of Riddell also teaches away from greater than 20N/ply. However, applicant's attention is directed to Osborn who teaches commercial paper bags for shipping have a PPT greater than 20N/ply (See Table II).

32. Applicant also argues that the tear tape taught by Riddell would not be suitable for tearing material with a PPT greater than 20 N/ply. However, it is noted there is not any particular tape feature in the rejected claims (e.g. composition or thickness of the tape) that distinguishes applicant's tape from the one taught by Riddell. Furthermore, with respect to a "controllably" terrible tape, Riddell teaches the tear is in a straight line and leaves a clean edge (See Abstract).

33. In response to applicant's argument that there is no suggestion to combine Hodson with Osborne, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Hodson teaches mercantile food bags comprising polyethylene films and Osborn is relied on as evidence of the conventionality of polyethylene films used in commercial bags used in shipping (Column 1, lines 1-25) with a PPT greater than 20N/ply (Table II). Thus, Osborn provides motivation for selecting a PPT greater than 20N/ply since this

was the conventional PPT for mercantile polyethylene bags. Applicant further argues that a PPT greater than 20N/ply of Osborn would destroy the structural integrity and heating of Hodson 180-220°F. However, applicant has not provided evidence that having a PPT of greater than 20 N/ply is not well suited for these conditions.

Furthermore, with respect to the controllability of the tear tape, Hodson et al. teach using tear tapes to open a package provide "a clean tear along an edge of the package", or would be controllably tearable (Column 1, lines 19-20).

34. In response to applicant's argument that there is no suggestion to combine Union Carbide with Osborne, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Union Carbide teaches polyethylene based mercantile packages with a tear tape, and Osborne teaches the conventional commercial polyethylene based packages have a PPT greater than 20 N/ply (Table II). Thus, Osborne provides motivation for using a PPT of greater than 20 N/ply since this is PPT for mercantile polyethylene based packages, which is the purpose of Union Carbide. Applicant further argues that the films taught by Union Carbide are inherently less than 20 N/ply and that the commercial films of Osborne would destroy Union Carbide's functionality because the Osborne's films could not be laminated. However, applicant has failed to provide evidence

showing how a low PPT is an inherent characteristic of the Union Carbide films and how the greater PPT could not be laminated.

35. With respect to applicant's argument that the tape of Union Carbide is not "controllably tearable" for a PPT greater than 20 N/ply, Union Carbide teaches "pulling of the tear tap tab lifts the tear tape and the portion of the polyethylene film coterminous therewith from the plane of the overwrap in neat, nearly straight-edged manner shown in Figure 2, which is more desirable from a reclosure standpoint and more attractive as well" (Page 3, lines 46-52). Thus, the tape would be controllably tearable. Additionally, it is noted there is not any particular tape feature in the rejected claims (e.g. composition or thickness of the tape) that distinguishes applicant's tape from the one taught by Union Carbide and would suggest that the Union Carbide tape would not provide a controllable tear for a PPT of greater than 20 N/ply.

Conclusion

36. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

37. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 1761

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

38. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

39. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

40. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
Art Unit 1761



MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700